

Sentence Inflation, its Causes and Consequences for Prisons, Rehabilitation and Public Finances

For at least four years our prisons have been full and successive governments have struggled to introduce increased capacity as the numbers rise. Projections from the Ministry of Justice suggest they will continue to rise.¹ The problems are acute in the male adult estate. The number of women in prison makes up only 3.8% of the total and incarceration of children has steadily declined in recent years.² Capacity problems have resulted in an increased focus on sentencing, the use of prison for punishment and the efficacy of prison in rehabilitating prisoners and reducing reoffending.

The prison population and the amount of time prisoners spend inside are affected not only by the type and length of sentence but also by the statutory regimes in place for release before the end of sentence and the prevalence of recalling released prisoners for breach of licence conditions. A hard look at all these factors is necessary because there is no practical way that prison capacity can be expanded to keep up with growing demand if nothing changes. Steps to reduce the prison population have been achieved through adjusting early release provisions. More will come in consequence of the provisions found in the Sentencing Act 2026. These developments have been couched in terms of a response to the overcrowding crisis rather than following a principled examination of the effects of imprisonment or the length of sentences on the rehabilitation of offenders and the reduction in crime.

Sentencing is not only about punishment. The statutory purposes of sentencing are now found in section 57 of the Sentencing Act 2020. When dealing with adults the court must have regard to five purposes of sentencing: (i) the punishment of offenders; (ii) the reduction of crime (including its reduction by deterrence); (iii) the reform and rehabilitation of offenders; (iv) the protection of the public including victims of crime; and (v) the making of reparation by offenders to persons affected by their offences. The statute does not accord a hierarchy to those factors. The purposes of sentencing for children, those under 18, have long been different and

¹ MoJ Annual Statement on Prison Capacity 2024 and 2025

² MoJ Offender management statistics quarterly: July to September 2025

are now found in section 58 of the 2020 Act: the court is under a duty (i) to have regard to the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18³; and (ii) to have regard to welfare and in certain cases to take steps in relation to surroundings of the child and provision of education.⁴

Imprisonment is but one of the tools of punishment available to the court and loss of liberty is regarded as the most punitive. Whether that is so for all offenders is certainly moot. For some, extended restrictions on liberty, through curfews, travel bans and the like may be more punitive than a short period in prison, and for others who have means, a short prison sentence may be preferable to a substantial financial penalty. But if there is to be prison, sections 230 and 231 of the 2020 Act impose two restrictions, leaving aside mandatory sentences and those with minimum terms. First, the court must not pass a custodial sentence, including a suspended sentence, unless it is of the opinion that the offence, or in combination with other offences, was so serious that neither a fine alone nor a community sentence can be justified. Secondly, that the custodial sentence must be for the shortest term that in the opinion of the court is commensurate with the seriousness of the offence or offences. These judgments are inevitably subjective.

All politicians acknowledge the crisis in our prisons, yet there has been little public acknowledgement that sentence inflation has been a potent driver of an increasing prison population. Neither has there been much political discussion of its causes, although organisations such as the Howard League for Penal Reform and the Prison Reform Trust have for many years been drawing attention to what has been happening.

In September 2024, all former Lords Chief Justice of England and Wales collaborated in the production of a short paper called “Sentence inflation: a judicial critique”. We drew attention to the phenomenon and its causes and briefly identified the financial and human costs, highlighting some particularly concerning injustices. We welcomed the then recently announced decision of the government to establish an independent review of sentencing and noted the pressing competing demands on the public purse. Before making a series of specific recommendations we suggested that:

“[T]he government should be seeking to reduce to a minimum the amount that has to be spent on keeping prisoners locked up. The positive way to achieve this is by investing to reduce

³ Section 37 of the Crime and Disorder Act 1998

⁴ Section 44 of the Children and Young Persons Act 1933

offending and reoffending. This could be funded by reversing the trend of keeping people in prison for longer simply to punish them more severely.”

The Independent Sentencing Review was set up shortly afterwards. It was chaired by The Rt Hon. David Gauke, a former Secretary of State for Justice and Lord Chancellor. I had worked closely with him during his 18 months in that office and became one of the Review panel members. We produced two reports: History and Trends in Sentencing in February 2025 and the Final Report and Proposals for Reform in May 2025. The work of the Independent Review informed the Sentencing Act. But one aspect of sentencing that has been a driver of increased prison terms across the board was not within the scope of our terms of reference. That was Schedule 21 to the Criminal Justice Act 2003⁵. It substantially increased the minimum terms those convicted of murder must serve before being eligible for release on licence by the Parole Board.

Increase in Prison Population

The Ministry of Justice published its latest prison statistics on 29 January 2026.⁶ It contains detail of the breakdown of those in custody by sex, age, type of sentence and length, ethnicity and religion. My purpose in touching on them is to give highlights rather than descend into the minutiae.

On 31 December 2025, there were 85,613 prisoners of all sorts in our prisons, mostly male with a shade over 3,500 female prisoners. The prison population had exceeded 88,000 during 2024 and 2025. There are very few in custody who are under 18 and the number between 18 and 21 is limited to a few thousand. Of the total figure, 10,930 have been remanded in custody awaiting trial and 5,698 remanded in custody following conviction but awaiting sentence. The number of those remanded awaiting trial has grown in recent years and reflects the increased outstanding caseload in our criminal courts. A significant proportion of those will either plead guilty or be convicted and of that cohort many will remain in prison following sentence. A significant proportion will be acquitted and released. Of those convicted and awaiting sentence, either while reports are prepared or pending the trial of co-defendants, a large proportion will remain in custody following sentence.

⁵ Now Schedule 21 to the Sentencing Act 2020

⁶ Offender Management Statistics Bulletin, England and Wales 29 January 2026; MoJ Prison Population 31.12.25

Of the total number of prisoners, 11,468 had been released but recalled because of breached licence conditions, a figure which has also been higher recently. Only 11% of recalls between July and September 2025 were due to facing a further charge.

Just pausing there for a moment, in round terms, between 19% and 20% of the prison population are on remand; and just under 14% of the total have been recalled.

These numbers bear comparison with the position 30 years ago. In 1993, the prison population was around 44,000. A very sharp increase in numbers occurred between 1993 and 2012 when it reached 87,000.⁷ Both the remand and recall populations have significantly increased over recent decades. Indeed, in 1993, the recall population was fewer than 100.⁸ Policy and legislative change have resulted in many prisoners being recalled in circumstances they would not have in the past. That has been a contributor to the reality that many prisoners are spending a higher proportion of their sentence in custody than was the case in the past.

A range of factors has contributed to the increase in the number of sentenced prisoners.

First, the rate of incarceration in England and Wales is high by European standards. The World Prison brief run by Birkbeck College⁹ provides comparative statistics. England and Wales have an incarceration rate of 138 per 100,000, Scotland 147 and Northern Ireland 107. Ireland is lower than all parts of the United Kingdom at 101. In France it is 126, Spain 121, Austria 104, Sweden 92, Germany 71 and the other Nordic countries significantly less.

In 2000, the incarceration rate in England and Wales was 124 which shows that over the last 25 years it is grown by 10%.

There has been a striking rise in the use of custodial sentences since 1993. The custody rate for adult offenders, that is sentences of immediate custody, has increased since 1993 from 16% to 21% in 2011¹⁰ and then to 32% in 2024.¹¹ This has been accompanied by a marked reduction in the use of community sentences. Between 2010 and 2024 their use dropped by 61%.¹² Suspended sentence orders have also declined in recent years. In the 10 years to 2024 they reduced by 10%.¹³

⁷ MoJ, Story of the Prison Population 1992-2020 England and Wales

⁸ *ibid*

⁹ The figures are updated constantly. Website accessed 30.1.26

¹⁰ Story of Prison Population 1993 - 2012

¹¹ Independent Sentencing Review, History and Trends

¹² MoJ, Criminal Justice System Statistics Quarterly. Outcomes of Offence data tool (2024)

¹³ *ibid*

Along with increased use of immediate custody, sentence lengths have also increased.

In 1993, the average custodial sentence length for indictable offences was 16 months.¹⁴ It peaked at 24.3 months in 2022 and by September 2025 stood at 22 months.¹⁵ Averages are useful but often obscure big change or volatility in some areas covered by the average. Custodial sentences of more than 10 years, excluding indeterminate and life sentences, more than tripled from 487 in the year ending June 2010 to 1,639 in the year ending June 2024.¹⁶ At the same time, shorter custodial sentences (12 months or less) have decreased by 64%. This means the number of people in prison serving sentences of less than 12 months had dropped to 3,419 in December 2025 compared to 6,962 in December 2010.¹⁷ There has also been a striking increase of 145% in the number of prisoners serving life sentences between September 1993 and December 2025 from 3,086 to 7,570.¹⁸

Minimum terms for life sentences have also been increasing. The average minimum term for those convicted of murder rose from 13 years in 2000 to 21 years in 2021.¹⁹ Up to date figures are not available but I would strongly suspect that it has continued to increase.

I have mentioned that the increased use of recall has resulted in many prisoners spending longer in custody but another feature of the sentencing landscape which affects how long prisoners spend inside has been the changes made in early release provisions over the years.

It has always been the case that the overwhelming majority of prisoners do not serve the whole of the headline sentence imposed by the judge. The exceptions are fourfold. First, the small number of life sentence prisoners who are subject to a whole life tariff and will never be released - the increase in their number from 51 in 2015 to 74 in 2025 is itself an illustration of sentence inflation in microcosm. Secondly, those subject to life sentences but whom the Parole Board never sanctions for release on licence because they remain dangerous. Thirdly, prisoners who are serving indeterminate sentences for public protection, IPP prisoners, who are not sanctioned for release by the Parole Board. Fourthly, those who die in prison, which is an increasing number because of the substantial increase in mostly elderly prisoners who die of

¹⁴ Story of Prison Population 1993 - 2012

¹⁵ MoJ, Criminal Justice Statistics Quarterly: September 2025

¹⁶ MoJ, Criminal Justice System Statistics Quarterly. Outcomes of Offence data tool (2024); and Independent Sentencing Review History and Trends p 13

¹⁷ MoJ Offender management statistics quarterly: July to September 2025

¹⁸ Offender Management Statistics Bulletin, England and Wales 29 January 2026; MoJ Prison Population 31.12.25

¹⁹ House of Lords written answer 6 April 2022

natural causes. In the 12 months to December 2025, 224 prisoners died from natural causes, and there is a worrying number who die by their own hand, 79 in the same period.²⁰

The treatment of the IPP prisoners remains a stain on the face of our criminal justice system. The sentence was introduced by the Criminal Justice Act 2003. It was imposed on prisoners considered dangerous by reference to statutory criteria who would, in many cases, have received short determinate sentences. Like a life sentence there was a minimum tariff – but it could be very short – after which release rested in the hands of the Parole Board. The sentence itself was abolished 15 years ago when its deficiencies were recognised by the then government. The author of the sentence, Lord Blunkett, has long campaigned to change statutory provisions to enable more to be released. There remain 2,388 IPP prisoners in custody, of whom 924 have never been released.²¹ The others have been recalled most often for breach of licence conditions which do not involve reoffending. The new Sentencing Act provided an ideal vehicle to deal with this injustice but the government, in company with all those since 2010, regrettably ducked the issue and resisted amendments in the Lords which would have gone some way to doing so.

Release provisions have always been complicated and changed over the years. I shall attempt no more than the briefest of sketches. Section 60 of the Criminal Justice Act 1967 allowed for most prisoners serving determinate sentences to be released by the Secretary of State after serving one third if the Parole Board so recommended. There were also powers to remit sentences under Rule 5 of the Prison Rules 1964. Over time fewer prisoners were released on licence at or near completing one third of their sentence. One of the many reforms introduced by the Criminal Justice Act 2003 was to provide that prisoners serving determinate sentences should be released at the halfway point.²² The Act also gave the Secretary of State power to release prisoners early. Home detention curfew had been introduced by the Crime and Disorder Act 1998. Most prisoners sentenced to relatively short sentences are released early on a tag. Release at the halfway point was the settled position for some time. Then in 2020 secondary legislation increased the proportion to be served from half to two thirds for determinate sentence prisoners of four years or more for specified violent and sexual offences.²³ The two thirds release date was extended to include a wider range of offenders in 2022.

²⁰ Safety in custody: quarterly update to September 2025

²¹ MoJ, Offender management statistics quarterly: July to September 2025

²² Section 244

²³ The release of Offenders (Alteration of relevant Proportion of Sentence) Order 2020

The result of all this was that prisoners serving determinate sentences are subject to automatic release provisions of one half or two thirds, depending on their offences and length of sentence, but with many also eligible for earlier release on home detention curfew. Many on relatively short sentences have been serving only 20% in custody. Recently, the automatic release point was moved to 40% for many to ease overcrowding. Yet there remain many who can only be released on authority of the Parole Board.

The Independent Sentencing Review recommended a simpler and more transparent model which would result in determinate sentence prisoners, subject to good behaviour, being released from custody after serving a third of their sentence, then being subject to intense supervision for the next third and finally a less intrusive licence period for the final third. The government included such a model in the Sentencing Act.

Causes

In a detailed analysis by the Ministry of Justice called the Story of the Prison Population 1993 – 2012 in England and Wales, two broad factors were held responsible for the increase in prison population in that period: “tougher sentencing and enforcement outcomes, and a more serious mix of cases coming before the courts.” It went on to explain that,

“legislative and policy changes have made sentence lengths longer for certain offences (e.g. through the introduction of indeterminate sentences for public protection, mandatory minimum sentences and increased maximum sentences) and increased the likelihood of offenders being imprisoned for breach of non-custodial sentences or recalled to custody for failure to comply with licence conditions.”

The increase in serious offences coming before the courts in that period included those for violence, a trend since reversed. There was also a rapid increase between 1993 and 2001 of those serving sentences for drug offences with increased sentence length, but thereafter the population for drug offences “remained fairly stable”. There was a significant increase in the number of offenders imprisoned for sexual offences after the coming into force of the Sexual Offences Act 2003 and an increase in the average custodial length for sexual offences. The range of sexual offences was widened and maximum sentences were increased by comparison with earlier legislation.²⁴

The position was different between 2010 and 2024. Analysis for the Independent Sentencing Review demonstrated that between 2010 to 2024 custodial sentence length increases appeared

²⁴ In particular, the Sexual Offences Act 1956.

primarily to be driven by an increase in the custody rate and length of custodial sentences handed out for identical categories of crime rather than changes in the mix of crime.”²⁵

The legislative and policy changes discussed in the 2012 publication and again in the Independent Sentencing Review were themselves a reflection of the “tough on crime” political agenda of both main parties from the early 90s reflecting what is thought to be the public mood. Legislative changes, including the proliferation of minimum and increased maximum sentences, have resulted in increased sentences.

Judges do not sentence in a vacuum and must reflect such changes; and those changes in themselves reflect political judgements about public mood. So too must the Sentencing Council in producing guidelines.

But that public mood is not evidence driven. There is a widespread view that serious crime has been rising and that sentences have been falling. Neither is correct.

The Office for National Statistics crime survey data indicate a long-term decline in common types of crime since the 1990s.²⁶ Homicide offences are at the lowest ever recorded and offences of serious violence have been falling. The ONS had identified its 2017 report that despite crime falling since 1995 public perception was that it was rising.

Public perception is inevitably influenced by a media focus on particularly serious crime but it almost always is an error to reason from the particular to the general. There are ill-informed comments from politicians, including some in the US. There is also the reality that some offending has been increasing, for example fraud, mobile phone snatching and organised theft from shops. The fall in serious offending has been seen across the globe and particularly in advanced democracies. The causes have been much studied, but research does not suggest that increased sentencing is a factor.²⁷ ²⁸ Much offending is spontaneous rather than premeditated, especially offences of violence. It is also much more likely that when there is calculation an offender will focus on the chances of being caught and prosecuted rather than any

²⁵ Page 15 of the First Report and footnote there cited

²⁶ ONS Crime in England and Wales: year ending September 2025, published 29 January 2026 and tables which illustrate changes since 2005.

²⁷ See, e.g., Davies and Farrell *The Conversation* 13.5.24; Roder and others *What Caused the crime Decline?* (2015) Columbia Business School Research Paper No 15-28

²⁸ Matteo Renno Santos and Alexander Testa ‘Homicide is declining around the world – but why?’ *The Conversation* (4 November 2019) <https://theconversation.com/homicide-is-declining-around-the-world-but-why-125365> accessed 2 September 2024. Within the context of rising incarceration rates, a US study found the impact of imprisonment on declining crime rates to be negligible. See Roeder and others (n 8)

understanding of sentencing regimes. Research by the Sentencing Council in 2022 found there was little evidence that increasing sentences had a deterrent effect. The Council pointed to the reality that much offending is associated with an absence of rational thinking, with emotional arousal and the influence of drink or drugs.

Public perception about sentencing was explored in polling by the Justice Select Committee of the House of Commons in its relatively recent 2023 report.²⁹ That showed that most people surveyed believed that sentences were shorter than they were 25 years ago, when, as we have seen, the opposite is true.

The problem is that governments appear to have been legislating based on myths rather than reality.

Schedule 21

I shall pause to focus on Schedule 21, one statutory change which is recognised to have produced profound upward pressure on all sentences. It stipulated starting points for determining the minimum term murderers must spend in prison.³⁰

Schedule 21 was a response to the decision of the House of Lords in *Anderson v. Secretary of State for the Home Department* [2003] 1 AC 837; [2002] UKHL 46. Under section 29 of the Crime (Sentences) Act 1997, the Secretary of State could decide, on advice by the trial judge, the Lord Chief Justice and departmental officials, the minimum period necessarily to be served by a prisoner before he was released on licence. In *Anderson* this was declared incompatible with article 6 of the European Convention on Human Rights.

The approach of the Lord Chief Justice, who reviewed all such sentences imposed by trial judges, had recently been set out in May 2022 by Lord Woolf in a Practice Statement. That Statement reflected long-established practice in suggesting starting points very much lower than those which emerged through Schedule 21, a fact pointed out in the House of Commons in debate on the Bill. The Home Secretary was commendably frank in accepting that, but explained that he disagreed with the Lord Chief Justice. The reassertion of Parliament's role was to secure higher minimum terms than those previously determined by the judiciary.³¹

²⁹ Public Opinion and Understanding of Sentencing

³⁰ Now Schedule 21 to the Sentencing Act 2020

³¹ Hansard, HC Vol. 405, col. 871 (20 May 2003)

What appears to have been misjudged by the government was the prospect of a substantial increase in minimum terms for murder leading to sentence inflation more widely.

Lord Woolf spoke on the second reading of the Bill in the House of Lords. He said that to produce sentencing guidelines in statute was “inadvisable”, although not unconstitutional. In advance of the committee stage, he had lodged a paper in the libraries of both Houses expressing the unanimous views of all the Lord Justices of Appeal sitting in the Crime. After noting that the new starting points did not follow advice from the Sentencing Advisory Panel or any consultation, the paper made a series of points including that,

“the figures are out of all proportion with other offences for serious crimes ... if these figures are enacted then they are bound to result in substantial increase in sentencing in relation to crimes overall and distort the task of the Sentencing Council”³²

The paper went on to explain that the suggestion that treating Schedule 21 as irrelevant when determining sentences for other offences would not accord respect to the legislation and produce injustice between offenders. Lord Ackner echoed these points in debate and explained that other serious cases must be kept in line, otherwise public confidence would suffer.

In response the minister asserted that the government,

“do not believe that the ratcheting up to which [the Lord Chief Justice] refers will occur. We have examined the history of the way in which sentencing in relation to murder and other generic sentences takes place. I hope that the ... Committee will accept that one does not tend to pollute the other.”³³

The government were wrong and the judiciary right – not altogether surprising,

It is fair to say that the judiciary, including Lord Woolf himself, then sought to limit the pollution to which the minister had referred but the inexorable logic of the position articulated in his paper asserted itself. Over time the impact of Schedule 21 led to an increase in sentences for attempted murder, conspiracy to murder, incitement to solicit murder and the various types of manslaughter. It has also played its part in increasing sentences for causing grievous bodily harm with intent.³⁴ Its impact has been much more widespread because good sentencing practice requires the courts and the Sentencing Council to make sure that all sentences sit within a proportionate structure. Offences are different; culpability varies as does harm but there needs to be coherence and understandable relationship between the sentences imposed for different

³² Para 57 of the paper

³³ Hansard, HL Vol. 653, col 1047 915 October 2003

³⁴ For a valuable discussion see: Sentencing Policy or Short-term Expediency, David Jeremy KC [2010] Crim.L.R.Issue 8

crimes within the relevant statutory framework. All that should have been accepted by government in 2003 as it was obvious. The impact of Schedule 21 has recently been confirmed by the Sentencing Council in its response to the call for evidence by the Independent Sentencing Review.³⁵

Schedule 21 has not been left alone since its introduction. Governments have repeatedly tinkered with it, on each occasion to increase starting points. For example, the starting point of a whole life order has been expanded from its inception, the most recent by section 11 of the Sentencing Act 2026. In March 2010, the starting point for those over 18 who carry a knife or other weapon to the scene and use it to commit murder was raised to 25 years from 15 years. Such behaviour was always an aggravating factor which increased substantially the minimum term. The government of the day was reacting to campaigning pressure.

Schedule 21 needs a hard look. There was a glimmer of hope in 2010 when the coalition government published a paper entitled: *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. They did not pull their punches on Schedule 21. They said it was:

“based on ill thought out and overly prescriptive policy. It seeks to analyse in extraordinary detail each and every type of murder. The result is guidance that is incoherent and unnecessarily complex and is badly in need of reform so that justice can be done properly in each case.”

I doubt that many would disagree with that assessment although nothing came of it.

The Law Commission is conducting a review of Homicide Law, including Schedule 21, which in due course may provide the impetus for change.

Schedule 21 applies in England and Wales and not in Scotland or Northern Ireland. This has led to significant disparities in sentencing across the United Kingdom. Minimum terms over 30 years in Scotland are very rare. The Scottish Sentencing Council website notes that the longest to date in Scotland is 37 years. The Court of Appeal in Northern Ireland has recently revisited the length of minimum terms in *R v. Whitla* [2024] NICA 65 and adjusted them upwards from the starting points discussed in *R v. McCandless* [2004] NICA 1. They were based on Lord Woolf’s Practice Statement. But they fall far short of the minimum terms specified in Schedule 21. We noted in our paper in September 2024 (a month before the judgment in *Whitla*) that minimum terms of over 30 years were unknown in Northern Ireland. I have since found one: *R v. Trevor Hamilton* [2008] NICA 27 where a whole life tariff was

³⁵ See Sentencing Council website

reduced on appeal to 35 years. Yet the position remains that in both Scotland and Northern Ireland tariffs are much shorter than in England and Wales. These are separate jurisdictions subject to different legislation and so the differences do not strictly call for justification. But in a United Kingdom it is a pretty odd state of affairs,

There is one further cause of sentence inflation that I should touch on before turning to the consequences and the question whether the increased use of prison and longer sentences reduce crime.

There has been a tilt towards the harm caused by a crime, rather than culpability, becoming more dominant in sentencing. This was reflected in section 143(1) of the Criminal Justice Act 2003³⁶ which required the court when considering the seriousness of an offence to consider harm which the offence “caused, was intended to cause or might foreseeably have caused”. This provision was relied upon by the Court of Appeal in *R v. Appleby* [2009] EWCA Crim 2693³⁷ when substantially increasing sentences for unlawful act manslaughter. There has been an increased focus on the impact of a crime on its victim reflected, for example, in personal statements from victims.

The creation of two new driving offences illustrates the point in legislation. Careless driving, driving without due care and attention, has been a distinct summary only offence since the Road Traffic Act 1930. It is often characterised by momentary inattention or minor lapses which result in an accident, by contrast with the old offence of reckless driving and now dangerous driving. Those engage very bad driving indeed which inevitably give rise to serious risk of which the driver should be aware. It was long the case that the consequences of careless driving did not have a bearing on the sentence limited as it was to a fine, endorsement, or disqualification in some circumstances. That was because the consequences of a piece of careless driving would usually bear little relationship to the degree of lack of care and attention.

³⁶ Now section 63 of the Sentencing Act 2020

³⁷ At para [14] “Section 143(1) of the Criminal Justice Act 2003 focussed significant importance in the sentencing process on the consequences of every offence.

“In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused”.

This statutory provision was new. It expressly required that both the offender's culpability and the consequences, actual or potential, intended or foreseen, of the crime should be expressly addressed in the sentencing decision. In manslaughter culpability may be relatively low, but the harm caused is always at the highest level.

Yet, in 2008, Parliament introduced an offence of causing death by careless driving³⁸ with a maximum sentence of five years' imprisonment; then in 2022 one of causing serious injury by careless driving³⁹ with a maximum sentence of two years. There is a strong argument that these offences are arbitrary and capricious given the unforeseeable nature of harm that carelessness will cause, but they are a good illustration of the shift which has occurred.

By contrast the well-established offences of serious violence in the Offences Against the Person Act 1861 paint a different picture. The offence of causing grievous bodily harm with intent contrary to section 18 carries a maximum life sentence. To assault someone with the intent to cause them such harm imports a high degree of culpability. By contrast, inflicting the same degree of injury but without that intent, an offence contrary to section 20, suggests much lower culpability. The maximum sentence is five years imprisonment, precisely the same maximum as provided for assault occasioning actual bodily harm. Our Victorian forebears understood both that the injury resulting from an assault was often unpredictable and that intent, an important marker of culpability, was the critical factor in sentencing for serious assaults.

Consequences

What, then, of the consequences of sentence inflation? It has contributed to overcrowding in our prisons because no government has been able to expand prison capacity sufficiently quickly to meet demand, a demand which government projections expect to continue to rise.⁴⁰ Between October 2022 and August 2024 the estate was operating at between 98% and 99.7% capacity.⁴¹ That, in turn, has resulted in poor conditions for those incarcerated and also for prison staff. As a result of overcrowding and financial pressures, necessary work on rehabilitation, training and education is not being undertaken as it should be. It is through such work that the rate of reoffending is reduced which, in turn, would contribute to a further fall in crime. It is through that work that ex-prisoners are encouraged to become productive members of society.

Criminal activity has a clear economic cost and, of course, keeping people in prison is expensive.

³⁸ The Road Safety Act 2006 (Commencement No. 4) Order 2008

³⁹ Section 87, Police, Crime, Sentencing and Courts Act 2022

⁴⁰ MoJ prison population projections 2025 -2030

⁴¹ PAC Prison Estate Capacity March 2025

The average annual cost per prisoner in 2023 – 2024 was £53,801⁴², with open prisons being the least expensive and closed, high security prisons the most. The government have announced spending of £4.7 billion building prisons between 2026 to 2030. The National Audit Office and an independent review by Dame Anne Owers, a former Chief Inspector of Prisons, have questioned both the cost and utility of large scale prison building.⁴³ That figure takes no account of the £1.8 billion which the Public Accounts Committee of the House of Commons identified as the maintenance backlog in prisons in its report on Prison Estate Capacity in March 2025, nor the cost of upgrading existing prisons. The MoJ itself gives an overall figure of between £9.4 billion and £10.1 billion over 10 years as its capital spend on prisons.⁴⁴ That spending takes no account of the current shortfall in prison officers and structural problems which have led to high turnover and reduction in senior, experienced staff. Spending on staff will also rise substantially.

The costs of reoffending were estimated to be £18 billion a year by the House of Lords Justice and Home Affairs Committee in its report Better Prisons Less Crime in July 2025, a figure which has its origins in MoJ research.

What is clear is that imprisonment is very expensive. It is also clear that expenditure on effective rehabilitation, which reduces reoffending, is money well spent. Precise figures are not available but, excluding electronic monitoring, the average costs to the Probation Service in 2023 – 2024 of an additional person on their caseload was estimated at £3,150.⁴⁵

Overcrowding has led to direct adverse consequences for many prisoners. The Prison Service annual digest for 2024 to 2025 says that in the 12 months to March 2025, 25% of prisoners were held in overcrowded conditions where the number in a cell exceeded the “certified normal accommodation”. That is an MoJ term representing “the good, decent standard of accommodation that the service aspires to provide all prisoners.” The impact was put more starkly by Dame Anne Owers in her evidence to the Public Accounts Committee in March 2025:

“Crowding levels at the moment are about 23.6%, so that means about a quarter of the estate are living in a cell designed for one person with two people. To be clear to this Committee that

⁴² MoJ Costs per place, costs per prisoner 2023 - 2024

⁴³ Independent Review of Prison Capacity; and NAO Increasing the capacity of the prison estate to meet demand

⁴⁴ MoJ Prison Capacity Strategy 2024. The upfront cost of providing a new prison place is £500K (closed) and £400K (open); Independent Sentencing Review History and Trends in sentencing p. 40

⁴⁵ Independent Sentencing Review. Final report p.23

means that someone has to defecate where someone else eats their meal. They were designed for one person. There is an open toilet in that cell.”

The Justice Committee of the House of Commons published a report in November 2025 entitled, *Ending the cycle of reoffending – part one: rehabilitation in prisons*. It provides a penetrating analysis of the current state of rehabilitation activities in prisons. On any view, its headline findings are troubling. 50% of prisoners are not taking part in education or work in prison, and two thirds of offenders are not in education or work six months after release. “It is therefore unsurprising” it said “that 80 per cent of all offending in England and Wales is reoffending.”

The Committee described the prison capacity crisis, with overcrowding, staffing shortages, and deteriorating infrastructure as all undermining efforts to reduce reoffending. Overcrowding has led to arbitrary prisoner transfers, disrupted sentence progression, and reduced access to purposeful activity, education, and family contact. It noted the widespread failure to meet the statutory minimum for time out of cell. Many prisoners are locked up for 22 hours or more each day, with limited access to fresh air, showers, or rehabilitative activities. This lack of time out of cell undermines efforts to reduce reoffending and contributes to poor mental health and disengagement. The Committee recognised that purposeful activity, including education, work, and offending behaviour programmes, is central to rehabilitation. But it is inconsistently delivered and often deprioritised. The Committee was particularly critical of prison education which it considered underfunded and poorly delivered with low participation rates, poor Ofsted ratings and suffering from significant funding cuts.

It is clear that a failure to take steps to rehabilitate prisoners will do nothing to reduce reoffending rates and reduce crime. Indeed, it is likely that poor prison conditions, including overcrowding resulting from sentence inflation, has the opposite effect.

The latest data show a proven overall reoffending rate of those leaving prison of 43.8% and a reoffending rate of 66% for those who have received short custodial sentences yet only 34.3% for those on community orders or suspended sentences.⁴⁶ When comparing reoffending rates following community and suspended sentences with short immediate sentences one needs to exercise some caution to avoid confusing causation with association. That is because a fair proportion of those who get a short sentence of immediate custody will have had non-custodial

⁴⁶ MoJ, Proven reoffending statistics: January to March 2024

interventions but gone on to reoffend. I have yet to find an analysis taking that into account. Nonetheless, the figures are striking.

A custodial sentence is a serious punishment and the longer the sentence the greater the punishment. While a prisoner is incarcerated, he is unlikely to be reoffending at least if one takes no account of criminality within prisons, for example drug supply and consumption. The public is protected while a prisoner is incarcerated and individuals targeted by some offenders gain respite. Sentences crafted for those considered dangerous provide extended protection and are needed. There are those who present such a danger, but most do not. It is well understood that longer sentences have little deterrent effect.⁴⁷ It is the certainty of punishment rather than its length that matters. Rehabilitative interventions during the sentence and support after release are more important than sentence length in reducing reoffending. Indeed, there is good evidence that longer sentences increase the likelihood of reoffending for some offenders.⁴⁸

Academic studies have long questioned the effect of prison on rehabilitation and reoffending but comparisons with direct experience elsewhere provide some confirmation. The Independent Sentencing Review looked at programmes in Texas, The Netherlands and Spain all of which reduced reliance on custody, increased programmes focused on rehabilitation and saw reductions in the prison population and reoffending.

Conclusion

In England and Wales, we seem to have achieved the worst of all worlds. Sentences have increased along with the proportion of the sentence many offenders serve in custody. Prisoners have been more readily recalled to prison. All of this inflicts greater punishment but comes at great cost. There are direct financial and growing costs borne by the Exchequer to fund the prison population. There are human costs borne by prisoners, their families and prison service staff alike. And there are wider costs which result from the adverse impact on rehabilitation and reoffending. In short, lengthening a sentence or the time spent in custody will often be counterproductive.

The Sentencing Act 2026 marks the first reversal of a long-standing legislative trend. It will see many offenders released after serving a third of their sentences. It will restrict the use of short immediate custodial sentences and enable a sentence of three years' imprisonment, rather

⁴⁷ Gormley, Hamilton and Belton: The Effectiveness of Sentencing Options on reoffending Sentencing Council 2022

⁴⁸ *ibid*

than two, to be suspended. It seeks to tackle the overuse of recall and has widened the range of restrictions that may be attached to a community or suspended sentence to enable more targeted punishment.

There is more to be done. Lord Woolf was surely right in 2003 to warn that it was unwise to include sentencing guidelines in legislation. One obvious reason is that it makes it difficult for a government to reduce starting points for fear of a political or press backlash shouting “soft on crime”. It is for that reason that Schedule 21 has not had root and branch reform. It was perhaps inevitable, for the same reason, that the recent legislative reforms were presented as a necessary reaction to overcrowding in prisons rather than being, in themselves, the right thing to do.

One of the recommendations we made in the Independent Sentencing Review was that government should establish an external advisory body to advise on sentencing policy. The body would be informed by authoritative evidence, both domestic and international, on what works to reduce crime and prevent reoffending. It would provide analysis of the likely effects of proposed policy changes and make longer-term assessments of the cumulative impact of government policy. The Justice Committee of the House of Commons has made a similar recommendation.⁴⁹ It would be difficult to suggest that sentencing policy and legislative reform in recent decades have been grounded in evidence of their effect on crime or reoffending. Of course, raw politics cannot be taken out of this area altogether, but it would be a welcome change if our major political parties could move away from reacting to events and those who shout loudest to a more principled and evidence based approach. Perhaps then the pressures which have produced sentence inflation would abate and we may end up with sentencing which does not, in some respects, do active damage to the public interest.

⁴⁹ Public opinion and understanding of sentencing 2023